

Remarks

In view of the above amendments and the following remarks, reconsideration and further examination are respectfully requested.

Claims 1-8, 15-18, 43-59, 75-78, 95 and 97-109 have been canceled without prejudice, either in the present response or in prior amendments. In the present response, claims 171 and 172 have been added, and claims 60 and 96 have been amended. Consequently, claims 9-14, 19-42, 60-74, 79-94, 96, and 110-172 are currently pending and under consideration.

The Applicants first wish to thank the Examiner for indicating in item 10 that claims 79, 91 and 95 contained allowable subject matter. In this regard, claim 79 has been rewritten into independent form as new independent claim 171, and claim 91 has been rewritten into independent form as new independent claim 172. The features recited in claim 95 have now been incorporated into independent claim 60. As a result, claim 95 has been canceled, and claim 96 has been amended to update its dependency.

In item 1 of the Office Action, claims 64, 66 and 70 were “rejected under 35 U.S.C. 112, second paragraph, as being indefinite.” Specifically, the Office Action questioned the meaning of the “wherein the random percentage is within a specified range” terminology. The Applicant respectfully traverse, because it is submitted that one of ordinary skill in the art, after reading the claims and specification, would understand the metes and bounds of claims 64, 66 and 70. As should be recognized, present application describes a number of techniques for dynamically pricing items. In one technique, the price of an item is randomly adjusted around the best price. As stated on page 56, lines 1-6 of the present application:

After the specified time interval, the processor 110 randomly changes the price within a range around the best price in stage 2706. In one form, the dynamic pricing system 102 randomly adjusts the current price within -5% to +5% of the best price. As should be understood, the price can be randomly adjusted within different ranges. In another form, the price is randomly adjusted without having specified upper and/or lower range limits.

From reading the above passage as well as other parts of the application, one of ordinary skill in the art would easily appreciate that the claims at issue concern randomly adjusting the price within a specified range. That is, the random adjustments of price occur within specified upper and/or lower range limits. In the example given above, the specified range limits are -5% to +5% of the best price, but it should be recognized that other range limits could be used. Based on the discussion above as well as for other reasons, it is respectfully requested that the rejection of claims 64, 66 and 70 under 35 U.S.C. §112, second paragraph, be withdrawn.

Independent claim 97 was rejected in item 5 of the Office Action. Without conceding the basis for rejection, claim 97 has been canceled simply to speed allowance of the application. Since only allowed or allowable claims remain in the application, it is believed that the present application is in condition for allowance.

As a minor housekeeping matter, it should be noted that a check mark was placed by item 10 (drawings) on the Office Action Summary Sheet, but it was not indicated whether the drawings were accepted or not. It is believed that all of the previous objections to the drawings (and specification) were addressed in the July 18, 2003 Response, and therefore, the drawings should be acceptable. Therefore, it is requested that the drawings be indicated as being accepted in the next communication from the Patent Office.

As another housekeeping matter, it should be noted that the Applicants have not yet received initialed copies of the PTO-1449 (SB/08) forms submitted on January 15, 2004. For the Examiner's convenience, a copy of the date stamped postcard along with the Information Disclosure Statement (IDS) and accompanying paperwork have been enclosed with this response. So as to reduce the amount of paperwork in the Patent Office's file, the references cited in the IDS have not been again enclosed with this response. However, if for some reason the Examiner does not have copies of the cited references, the Examiner is invited to contact the undersigned representative by telephone so that the cited references can be promptly supplied.

It should be understood that the above remarks are not intended to provide an exhaustive basis for patentability or concede the basis for the rejections in the Office Action, but are simply provided to overcome the rejections made in the Office Action in the most expedient fashion.

In view of the above amendments and remarks, it is respectfully submitted that the present application is clearly in condition for allowance and an early notice of allowance is earnestly solicited. If after reviewing this amendment the Examiner feels that any issues remain which must be resolved before the application can be passed to issue, the Examiner is invited to contact the applicants' undersigned representative by telephone to resolve such issues.

Respectfully Submitted,

By 

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